IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.1038 OF 2003

IN

SUM. SUIT NO.3183 OF 2003

Bipico Industries
(Tools) Pvt. Ltd. .. Plaintiff

vs.

Essar Tools & Ors. .. Defendants.

Mr. Naushad Engineer i/by Zohair & Co.
for the plaintiffs.
Ms. Heena Pujara i/by Mahesh Shah & Co.
for defendants.

CORAM : S.U.KAMDAR, J.

DATE : 24th August, 2005.

P.C.

. The present suit is filed as a summary suit on the goods sold and delivered. It is the case of the plaintiff that the amount due and payable by the defendant to the plaintiff is Rs. 45,53,220 being the principal amount and interest thereon is of Rs. 15,54,749.40 totalling to Rs. 61,07,969. It is the case of the plaintiff that in respect of the aforesaid claim, there is also an acknowledgement of

liability being Exhibit B and C to the plaint. It is also the case of the plaintiff that in respect of the aforesaid supplies the defendants made part payments by cheques but these cheques are dishonoured. In the aforesaid summary suit, a summons for judgment has been taken out. The defendants have disputed the genuineness of the challans which are produced by the defendants. However, the defendants have not disputed that the goods are received. It is the contention of the defendants that only part of the goods are received and part is not received. No such details are set out in the reply that which part of the goods are received and which part of the goods are not received. The next contention raised is that the claim of the plaintiff as per letter annexed as Exhibit '1' to the reply is only is Rs. 2,21,957 and not as claimed in the suit of Rs. 45,53,220/- However, the learned Advocate for the plaintiff has drawn my attention to the two acknowledgements at Exhibits B and C. Exhibit B indicates an amount outstanding in respect of the goods supplied from Mumbai whereas Exhibit C indicates the outstanding in respect of the goods supplied from Bilimora. The advocate for the plaintiffs states that the bills mentioned in Exhibit '1" to the affidavit in reply of the defendants pertains to the supply effected from Bilimora and not from Bombay and therefore the said letter stipulates the claim of Rs. 2,21,957/-

The goods which are supplied from Mumbai is of Rs. 43,33,279.00 which are not included in the aforesaid letter. In view of the aforesaid, I find that there is no defence whatsoever in the present suit. In any event, with a view to give a chance to the defendant to contest the claim, I direct the defendant to deposit a sum of Rs. 50 lacs within a period of four weeks failing which the plaintiff will be entitled to a decree. If the aforesaid amount is deposited, the Prothonotary and Senior Master is directed to deposit the same in fixed deposit with any nationalised bank initially for a period of one year and renew the same thereafter from time to time till further orders.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from today. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.